

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

RICHARD DOUGLAS CULLINAN,

Debtor.

Case No. 22-51326-WLH
Chapter 11

COASTAL STATES BANK,

Plaintiff,

Adv. Proc. No: 22-05078-wlh

v.

RICHARD DOUGLAS CULLINAN,
CHRISTINA M. CULLINAN, FIFTH THIRD
BANK, NATIONAL ASSOCIATION, AND
CREDIBILITY CAPITAL, INC.,

Defendants.

**APPELLANT’S AMENDED DESIGNATION OF RECORD AND STATEMENT OF
ISSUES TO BE PRESENTED
ON APPEAL**

COMES NOW, Coastal States Bank (“CSB”), and files the following Amended Designation of Record on Appeal and Statement of Issues to be Presented pursuant to Fed. R. Bankr. P. 8009(a)(1). CSB first states that the issues to be presented on appeal is as follows:

1. Whether the bankruptcy court correctly concluded that a hypothetical bona fide purchaser would not be on inquiry notice under Georgia law that the cancellation of CSB’s security deed was in error.
2. Whether the bankruptcy court erred in refusing to rescind the subject cancellation as to Christina Cullinan’s interest in the subject property.

3. Whether the bankruptcy court erred in granting summary judgment to Christina Cullinan on a counterclaim raised under 11 U.S.C. § 544 since she is not a debtor in bankruptcy.

CSB further requests that the following items be included in the record on appeal:

| Filing Date | # | Docket Text |
|-------------|---|--|
| 05/18/2022 | <u>1</u> (35 pgs) | Adversary case 22-05078. Complaint against Richard Douglas Cullinan, CHRISTINA M CULLINAN, FIFTH THIRD BANK, NATIONAL ASSOCIATION, CREDIBILITY CAPITAL, INC. , Fee Collected \$ 350 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)) Filed by COASTAL STATES BANK (Chaness, Bret) |
| 05/19/2022 | <u>2</u> (2 pgs) | Summons Issued on CREDIBILITY CAPITAL, INC. Answer Due 06/21/2022; CHRISTINA M CULLINAN Answer Due 06/21/2022; Richard Douglas Cullinan Answer Due 06/21/2022; FIFTH THIRD BANK, NATIONAL ASSOCIATION Answer Due 06/21/2022 (cws) |
| 06/16/2022 | <u>4</u> (3 pgs) | Stipulation <i>Extending Deadline for Fifth Third Bank to Answer Complaint</i> Filed by Bret J. Chaness on behalf of COASTAL STATES BANK. (related document(s) <u>1</u>) (Chaness, Bret) |
| 06/20/2022 | <u>6</u> (33 pgs; 4 docs) | Answer to Complaint , Counterclaim by CHRISTINA M CULLINAN, Richard Douglas Cullinan against COASTAL STATES BANK filed by Will Geer on behalf of CHRISTINA M CULLINAN, Richard Douglas Cullinan. (Attachments: # <u>1</u> Exhibit A - Proof of Claim # <u>2</u> Exhibit B - Warranty Deed # <u>3</u> Exhibit C - Cancellation of Deed to Secure Debt) (Geer, Will) |
| 06/30/2022 | <u>7</u> (3 pgs) | Answer to Counterclaim (Related Doc <u>6</u>) filed by Bret J. Chaness on behalf of COASTAL STATES BANK. (related document(s) <u>6</u>) (Chaness, Bret) Modified on 6/30/2022 (cws). |
| 07/15/2022 | <u>9</u> | Answer and Defenses of Fifth Third Bank, National Association filed by G. Frank Nason IV on behalf of |

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| | (6 pgs) | FIFTH THIRD BANK, NATIONAL ASSOCIATION. (Nason, G.) Modified on 7/18/2022 (cws). |
| 07/18/2022 | <u>10</u> (2 pgs) | Request for Entry of Default <i>against Credibility Capital, Inc.</i> Filed by Bret J. Chaness on behalf of COASTAL STATES BANK. (related document(s) <u>1</u> , <u>2</u> , <u>3</u>) (Chaness, Bret) |
| 07/20/2022 | | Clerk's Entry of Default, pursuant to Bankruptcy Rule 7055 and a Request for Entry of Default filed by Coastal States Bank. It appears from the record that Credibility Capital, Inc., has failed to plead or otherwise defend in this case as required by law. (related document(s) <u>10</u>) (cws) |
| 08/22/2022 | <u>11</u> (8 pgs) | Report of Rule 26(f) Conference <i>with Stipulation of Facts</i> Filed by Bret J. Chaness on behalf of COASTAL STATES BANK. (Chaness, Bret) |
| 09/21/2022 | <u>12</u> (2 pgs) | Motion for Summary Judgment filed by Bret J. Chaness on behalf of COASTAL STATES BANK. (Chaness, Bret) |
| 09/21/2022 | <u>13</u> (4 pgs) | Statement of Material Facts in Support of Motion for Summary Judgment Filed by Bret J. Chaness on behalf of COASTAL STATES BANK. (Chaness, Bret). Related document(s) <u>12</u> Motion for Summary Judgment . Modified on 9/21/2022 (cws). |
| 09/21/2022 | <u>14</u> (8 pgs) | Brief (<i>Memorandum of Law in Support of Motion for Summary Judgment</i>) Filed by Bret J. Chaness on behalf of COASTAL STATES BANK. (related document(s) <u>12</u>) (Chaness, Bret) |
| 09/21/2022 | <u>15</u> (16 pgs; 3 docs) | Motion for Summary Judgment filed by Will B. Geer on behalf of CHRISTINA M CULLINAN, Richard Douglas Cullinan. (Attachments: # <u>1</u> Pleading Statement of Undisputed Facts # <u>2</u> Pleading MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS RICHARD DOUGLAS CULLINAN AND CHRISTINA M. CULLINANS MOTION FOR SUMMARY JUDGMENT) (Geer, Will) |

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| 09/21/2022 | <u>16</u> (4 pgs) | Brief <i>Statement of Position of Fifth Third Bank, National Association</i> Filed by G. Frank Nason IV on behalf of FIFTH THIRD BANK, NATIONAL ASSOCIATION. (related document(s) <u>15</u>) (Nason, G.) |
| 09/23/2022 | <u>18</u> (2 pgs) | Certificate of Service of <i>Defendants Richard Douglas Cullinan and Christina M. Cullinans Motion for Summary Judgment</i> Filed by Will B. Geer on behalf of CHRISTINA M CULLINAN, Richard Douglas Cullinan. (related document(s) <u>15</u>) (Geer, Will) |
| 10/12/2022 | <u>19</u> (5 pgs) | Response to Motion for <i>Summary Judgment</i> filed by Bret J. Chaness on behalf of COASTAL STATES BANK. (related document(s) <u>15</u>)(Chaness, Bret) |
| 10/12/2022 | <u>20</u> (4 pgs) | Response to Motion for <i>Summary Judgment and Statement of Undisputed Material Facts</i> filed by Will B. Geer on behalf of CHRISTINA M CULLINAN, Richard Douglas Cullinan. (related document(s) <u>12</u>)(Geer, Will) |
| 10/19/2022 | <u>22</u> (2 pgs) | Certificate of Service of <i>Response to Plaintiffs Statement of Material Facts and Motion for Summary Judgment</i> Filed by Will B. Geer on behalf of CHRISTINA M CULLINAN, Richard Douglas Cullinan. (related document(s) <u>20</u>) (Geer, Will) |
| 10/26/2022 | <u>23</u> (5 pgs) | Reply to Defendant's Richard and Christina Cullivans' response to its Motion for Summary Judgment filed by Bret J. Chaness on behalf of COASTAL STATES BANK. (related document(s) <u>20</u>)(Chaness, Bret) Modified on 10/27/2022 (cws). |
| 10/27/2022 | <u>24</u> (10 pgs) | ORDERED that Plaintiffs Motion for Summary Judgment is DENIED. IT IS FURTHER ORDERED that Debtor and Ms. Cullinans Motion for Summary Judgment is GRANTED. IT IS FURTHER ORDERED that Plaintiffs claims for rescission and declaratory judgment are DENIED. IT IS FURTHER ORDERED that Debtor and Ms. Cullinans counterclaim is GRANTED and Plaintiffs claim is deemed wholly unsecured. (Related Doc # <u>12</u>), (Related Doc # <u>15</u>) Service by BNC. Entered on 10/27/2022. (cws) |
| 12/06/2022 | 41 | Order Regarding Final Judgment. ORDERED that a |

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| | | Judgment in favor of all Defendants on all counts shall be entered concurrently herewith; and IT IS FURTHER ORDERED that Plaintiffs claim in Case No. 22-51326 is deemed wholly unsecured and determined to be inferior to Fifth Third Banks and Credibility Capital Inc.s interest in the Property. Service by BNC. Entered on 12/6/2022. |
| 12/06/2022 | 42 | Judgment: IT IS ORDERED that the Judgment is hereby entered in favor of all Defendants on all counts. Service by BNC Entered on 12/6/2022. (related document(s) 1) |

Respectfully submitted, this 20th day of December, 2022.

/s/ Bret J. Chaness
 BRET J. CHANESS (GA Bar No. 720572)
RUBIN LUBLIN, LLC
 3145 Avalon Ridge Place, Suite 100
 Peachtree Corners, GA 30071
 (678) 281-2730 (Telephone)
 (470) 508-9203 (Facsimile)
 bchaness@rlselaw.com

Attorney for Coastal States Bank

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2022, the within and foregoing was filed via the Court's CM/ECF system, which will serve notice on all registered parties who have appeared in this action. In addition, I certify that on the same date, I caused a copy of the within and foregoing to be served by U.S. First Class Mail, addressed as follows:

Christina Cullinan
3590 Valverde Circle
Jacksonville, FL 32224

/s/ Bret J. Chaness
BRET J. CHANESS (GA Bar No. 720572)